

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 017129

In the matter between:

The Competition Commission

Applicant

and

Cast Industries (Pty) Ltd

Respondent

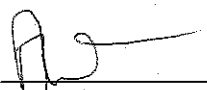
Panel: A Wessels (Presiding Member), M Mokuena
(Tribunal Member) and A Ndoni (Tribunal
Member)

Heard on: 16 July 2013

Decided on: 16 July 2013

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent attached hereto marked **Annexure "A"**, to be read with the addendum to the settlement agreement, attached hereto as **Annexure "B"**.



Presiding Member
A Wessels

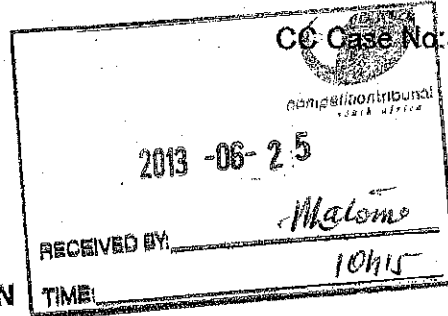
Concurring: M Mokuena and A Ndoni

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CT Case No: 30/CR/Mar12

CC Case No: 2009May4419

In the matter between:



THE COMPETITION COMMISSION

Applicant

and

CAST INDUSTRIES (PTY) LIMITED

Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
CAST INDUSTRIES (PTY) LIMITED IN REGARD TO A CONTRAVENTION OF
SECTION 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF 1998 (AS
AMENDED)**

The Competition Commission ("Commission") and Cast Industries (Pty) Limited ("Cast Industries") hereby agree that an application be made to the Competition Tribunal ("Tribunal") for confirmation of this Settlement Agreement as an order of the Tribunal in terms of sections 58(1)(a)(iii) and 59(1)(a) of the Competition Act, No. 89 of 1998 (as amended), on the terms set out below:

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1 Definitions

For the purposes of this Settlement Agreement the following definitions shall apply --

- 1.1 "**Bosun Brick**" means Bosun Brick Midrand (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at corner Cresset and Musket Roads, Midrand Industrial Park, Midrand;
- 1.2 "**CLP**" means the corporate leniency policy of the Commission published in the Government Notice No. 628 of 23 May 2008, in Government Gazette No. 31064 of 23 May 2008.
- 1.3 "**Commission**" means the Competition Commission of South Africa, a statutory body, established in terms of section 19 of the Act, with its principal place of business at Building C, Mulayo Building, dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 "**Commissioner**" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.5 "**Concor Technicrete**" means Murray & Roberts Building Products (Pty) Ltd t/a Concor Technicrete a company duly incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at corner Main Reef and Houtkapper Street, Roodepoort, Johannesburg;
- 1.6 "**Complaint**" means the complaint initiated by the Commissioner on 07 May 2009 in terms of section 49B(1) of the Act under case number 2009May4419 against the respondents for alleged contravention of section 4(1)(b)(i) of the Act;



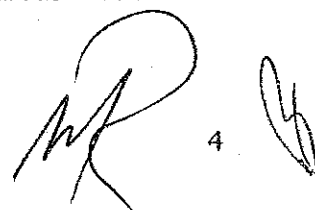
- 1.7 **"Generic paving blocks"** means paving blocks which include interlocking and bevelled paving blocks used in the industrial, commercial and residential markets in South Africa;
- 1.8 **"Infraset"** means Aveng (Africa) Limited t/a Infraset, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at 204 Rivonia Road, Morningside, Sandton;
- 1.9 **"MVA Bricks"** means MVA Bricks (Pty) Limited, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Roger Dyson Road, Pretoria West Industrial, Pretoria;
- 1.10 **"New Cast Industries"** refers to a company currently registered as Cast Industries (Pty) Ltd with registration number 2007/022665/07 and with its principal place of business at 38 Spanner Road, Clayville Industrial, Midrand. Cast Industries (Pty) Ltd was originally registered and incorporated as Burnleigh Investments (Pty) Ltd and changed to its current name on 18 September 2008;
- 1.11 **"Old Cast Industries"** refers to Brimacks Trading (Pty) Ltd with registration number 1993/003790/07. Brimacks Trading (Pty) Ltd was originally registered and incorporated as Cast Industries (Pty) Ltd and changed to its current name on 18 September 2008;
- 1.12 **"Respondents"** means *Infraset, Bosun Brick, Cast Industries, Concor Technicrete, Vibro Bricks and MVA Bricks*;
- 1.13 **"Settlement Agreement"** means this agreement duly signed and concluded between the *Commission and new Cast Industries*;
- 1.14 **"The Act"** means the Competition Act, No. 89 of 1998, as amended;



- 1.15 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body, established in terms of section 26 of the Act, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.16 "**Vibro Bricks**" means Vibro Bricks (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Schurweburg Street, Mooiplaas, Laudium, Pretoria.

2 Complaint investigation and the Commission's findings

- 2.1 On 22 October 2008 *Infraset* applied for corporate leniency in terms of the *CLP* regarding its involvement in a cartel in the market for the manufacture and supply of *generic paving blocks* in South Africa. In the *CLP* application, *Infraset* submitted information and documents to the *Commission* indicating, *inter alia*, the *respondents* held meetings and discussions as a result of which they, *inter alia*, agreed to fix the selling price of *generic paving blocks* in contravention of section 4(1)(b)(i) of the *Act*.
- 2.2 Following *Infraset's* application for corporate leniency, on 07 May 2009 the *Commissioner* initiated a *complaint* in terms of section 49B(1) of the *Act* against the *respondents*. The *Commission* duly investigated the *complaint* and found that the *respondents* had entered into an agreement, arrangement and understanding involving the fixing of the selling price of *generic paving blocks* in contravention of section 4(1)(b)(i) of the *Act*. The fixing of the selling price included an agreement among the *respondents* on, *inter alia*, minimum prices, transport costs and price increases of *generic paving blocks*. The *Commission's* investigation established that the aforementioned conduct of the *respondents* commenced in or about 2001 and continued until at least 2008.



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2.3 The *new Cast Industries* alleges that:

- 2.3.1 It was incorporated on 15 August 2007 as Burnleigh Investments (Pty) Ltd with registration number 2007/022665/07;
- 2.3.2 on 01 March 2008 Burnleigh Investments (Pty) Ltd acquired as a going concern the business of a company which at the time of the acquisition was registered as Cast Industries (Pty) Ltd ("old Cast Industries") but is now registered as Brimacks Trading (Pty) Ltd with registration number 1993/003790/07;
- 2.3.3 as part of the sale of business agreement Burnleigh Investments (Pty) Ltd changed its name to Cast Industries (Pty) Ltd ("new Cast Industries") on 18 September 2008 and *old Cast Industries* changed its name to Brimacks Trading (Pty) Ltd;
- 2.3.4 the *new Cast Industries* was not involved in cartel conduct and came into existence four months before the demise of the cartel in 2008; and
- 2.3.5 the shareholding in *new Cast Industries* has changed several times since it acquired the business of *old Cast Industries* and there is no one currently in the employ of *new Cast Industries* who has any personal knowledge of any of the facts set out by the Commission in its referral of this matter to the Competition Tribunal.

2.4 The Commission found that the *new Cast Industries* is liable for payment of the administrative penalty on the basis of, *inter alia*, that the business of the *old Cast Industries* was acquired as a "going concern" and *old Cast Industries* did not indemnify the *new Cast Industries* from liability for payment of the administrative penalty in terms of the Act.

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3 Settlement Discussions

- 3.1 On 22 January 2013 *new Cast Industries* made a written settlement proposal to the *Commission*. Following *new Cast Industries'* settlement proposal, the *Commission* and *new Cast Industries* engaged in settlement discussions.
- 3.2 On 18 March 2013 the *Commission* and *new Cast Industries* reached an agreement, the outcome of which is this *Settlement Agreement*.

4. Admission

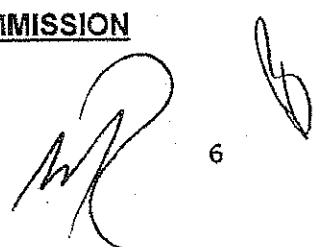
New Cast Industries admits that *old Cast Industries* engaged in conduct in contravention of section 4(1)(b)(i) of the *Act*.

5. Administrative Penalty

- 5.1 *New Cast Industries* is liable to pay an administrative penalty in terms of section 58(1)(a)(iii), read with sections 59(1)(a), 59(2) and (3) of the *Act* in the amount of R567 970.48 (FIVE HUNDRED AND SIXTY SEVEN THOUSAND AND NINE HUNDRED AND SEVENTY RAND AND FOURTY-EIGHT CENT) representing 2.5% of *New Cast Industries'* affected turnover for the financial year ended in February 2011.
- 5.2 *New Cast Industries* will pay the administrative penalty to the *Commission* within six (6) months after the date of the confirmation of this *Settlement Agreement* as an order of the *Tribunal*;
- 5.3 *New Cast Industries* shall remit payment of the administrative penalty into the following bank account:

Name of account holder:

COMPETITION COMMISSION

A large, stylized handwritten signature, possibly 'MR', is written over the text 'COMPETITION COMMISSION'. To the right of the signature, there are smaller handwritten initials, possibly 'CB', and the number '6'.

Bank name:

ABSA BANK PRETORIA

Account number:

4050778576

Branch code:

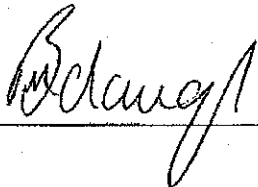
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7.3 The *Commission* will pay the administrative penalty into the National Revenue Fund in terms of section 59(4) of *the Act*.

8. Full and final settlement

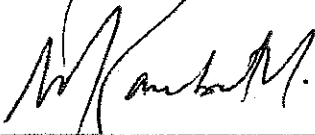
This *Settlement Agreement*, upon confirmation thereof as an order by the *Tribunal* concludes all proceedings between the *Commission* and *new Cast Industries* in relation to the contravention of section 4(1)(b)(i) of *the Act*, referred to the *Tribunal* under case number: CT Case No: 30/CR/Mar12.

SIGNED at MIDRAND on this the 12 day of JUNE 2013.



Duly authorised signatory
Cast Industries (Pty) Ltd

SIGNED at Pretoria on this the 21 day of June 2013.



Shan Ramburuth
The Commissioner, Competition Commission



IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CT Case No: 30/CR/Mar12

CC Case No: 2009May4419

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

CAST INDUSTRIES (PTY) LTD

Respondent

**ADDENDUM TO THE SETTLEMENT AGREEMENT BETWEEN THE COMPETITION
COMMISSION AND CAST INDUSTRIES (PTY) LIMITED IN RESPECT OF
CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF
1998 (AS AMENDED)**

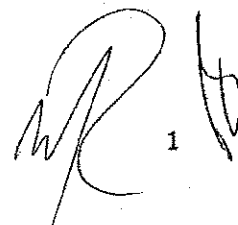
The settlement agreement between the Competition Commission and New Cast Industries (Pty) Limited dated 21 June 2013 ("the settlement agreement") is hereby amended as follows:

Insertion of paragraph 4A in the settlement agreement.

1. Paragraph 4A is hereby inserted in the settlement agreement.
2. The inserted paragraph 4A shall read as follows:

"4A. Agreement concerning future conduct

New Cast Industries agrees and undertakes to:



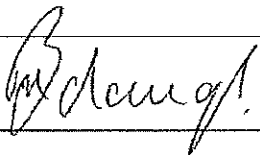
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4.1 prepare and circulate a statement summarising the content of this *Settlement Agreement* to its employees who are managers and to its directors and relevant corporate governance structures within one (1) month after the date of confirmation of this *Settlement Agreement* as an order of the *Tribunal*;

4.2 develop and implement a compliance programme in order to ensure that its employees, management and directors do not engage in any conduct which constitutes a prohibited practice in terms of *the Act*.

4.3 A copy of the compliance programme shall be submitted to the *Commission* within three (3) months after the date of confirmation of this *Settlement Agreement* as an order of the *Tribunal*."

SIGNED at NIDRAN on this the 15 day of JULY 2013.



Duly authorised signatory
Cast Industries (Pty) Ltd

SIGNED at Pretoria on this the 16 day of July 2013.



Shan Ramburuth
The Commissioner, Competition Commissioner


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